

PRIVILEGED AND CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATIONS

REPORTERS: Allen R. Purvis
Janet L. Johnson

TRIAL REPORT
SUMMARY/TESTIMONY/PROJECTION

CASE NAME: Cipollone DATE: 11-May-88 p.m. PAGE 1 OF 3

SUMMARY:

Walters continued her cross of Dr. Barker for the remainder of this afternoon by reviewing various medical articles that addressed the life expectancy of small cell patients and that suggested ATC was related to cigarette smoking. Walters also reviewed Rose's medical records with the witness.

WITNESS: Dr. Walter L. Barker

IDENTITY: Defendants' Specific Causation Expert

EXAMINER: CROSS: Cynthia Walters TIME: 2 hrs. 25 min.

TESTIMONY:

Walters began this afternoon's cross examination by directing Barker's attention to various articles on small cell which suggested that the life expectancy for this disease could exceed five years. In every instance Barker disagreed with the conclusions citing his personal experience treating small cell patients. She noted that several of the cited articles were older and he explained that many researchers were reviewing data on previously diagnosed small cell cancers and were reclassifying many of them as ATCs. He referred to a recent study at M.D. Anderson Clinic in Houston which showed a very short life expectancy for true small cell cancers.

Walter then spent over an hour reviewing approximately sixty pages of Rose's medical records. In many instances questions were not even asked about the records and the purpose of Walters' examination was simply to repeat to the jury the many references to small cell diagnosis in her records. Barker would acknowledge that the records were referencing a small cell diagnosis but he finally noted that, with respect to subsequent treating physicians' records, "that's what they had been copying down all along." He noted that whether she had ATC or small cell was "the issue before this court."

Walters tried to have Barker concede that this was a "very" aggressive tumor. Barker testified that it was a less aggressive tumor than what was ordinarily seen with small cell cancer. Walters

2025860556

then referred to Barker's deposition to show that he had described Rose's disease as "an aggressive malignancy." Barker again added that it was less aggressive than small cell.

With respect to the absence of an autopsy, Barker conceded that this was not unusual in today's climate. Barker disagreed with Walters that an autopsy "wouldn't have shown anything other than her tumor may have spread to more places than we knew" and he insisted that an autopsy might have shown involvement of the mediastinum and, if involved, this would be an indication of small cell cancer.

After the break, Walters focused her cross on reviewing several literature articles that suggested ATC was related to cigarette smoking. Walters attempted to draw a chart calculating the number of smokers and non-smokers in each study and eventually tried to suggest that ATC patients had the same percentage of smokers (85%) as small cell patients. Walters did not agree with Walters' methodology and noted that there were several studies she refused to include in her calculations such as the one by Gould and Warren.

After the jury was excused for the day, Sarokin returned to his crusade to have defendants avoid repeating the ATC diagnosis testimony with subsequent witnesses. "I think the jury has heard as much as possible about this diagnosis. I think there has been a violation of the Eighth Amendment - cruel and unusual punishment." Referring to the very laborious cross examination by Walters, Sirridge responded "I'm not sure I'm the one doing the punishing here, your honor." Sirridge assured Sarokin that the remaining two defense medical witnesses were necessary to show the ATC diagnosis from different specialists' view points and Sirridge assured the court that the testimony would be short, but he noted that the cross examination was obviously out of his control. Sarokin stated that he was convinced by Sirridge's representations but hoped all counsel would be more precise in their questioning.

ASSESSMENT:

Despite the tedious nature of the cross examination this afternoon, Barker remained alert and combative. When Walters cut him off, Barker replied "you didn't give me a chance to answer." When Walters would simply read from a record and then move to another page, Barker said "Is there a question for me?"

At one point Walters referred to Barker as "Judge." Barker said "I'm Dr. Barker" and Sarokin laughed and said "It's okay, I call Mr. Bleakley judge." This was the only break in the afternoon's testimony.

2025880557

PROJECTION:

Feldman will begin his direct upon conclusion of Walters' cross of Barker and any redirect by the defense.

Friday, May 13 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 16 -- Court will not be in session; reason unknown. No report will be transmitted.

Monday, May 23 -- Judge Sarokin's motion day -- no Cipollone trial. No report will be transmitted.

Monday, May 30 -- Court holiday -- Memorial Day. No report will be transmitted.

2025880558